

REMARKS

Claims 18 through 29 are currently pending in the present application, while claims 1 through 17 were withdrawn from further consideration as being drawn to a non-elected invention. Claims 18 and 19 have been amended. Support for the present amendment can be found at original FIGS. 2A through 2C, as well as paragraph [0030] of the original specification the latter of which states that purge valve 346 is opened up once oxygen in the recirculating fluid (which passes through recirculation loop 352) is consumed to allow the recently oxygen-free fluid of the recirculation loop to enter the anode 310 in order to purge it. As such, no new matter has been added.

Rejections under 35 U.S.C. § 102

Claims 18 through 24 have been rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,984,464 to Margiott et al (hereinafter Margiott). In the first paragraph of page 2 of the present Office Action, the Examiner indicated that the arguments made by the Applicant in his April 14, 2008 response to the Office Action mailed on February 21, 2008 were not persuasive because they were not commensurate in scope with the claims. By the present response, the Applicant has amended independent claim 18 in the manner discussed above. In so doing, the Applicant submits that the arguments made in the April 14, 2008 response are commensurate with the scope of the claims, and further that they (in conjunction with the present claim amendments) are patentably distinguishable from Margiott.

The Examiner further indicates that valve 64 of Margiott (shown in the figure thereof) is not a one-way valve, and therefore capable of allowing fluid flow in either direction between the anode and cathode flow paths. While it is true that an open valve (such as valve 64 of Margiott, so long as it is not a check valve) permits flow in either direction through the opening, it is not the valve that is recited in the claim, but an entire anode purge flowpath, of which valve 346 is but one component (the other being the conduit, tube or pipe used to convey any fluid therein

from the recirculation loop to the anode flowpath). As such, it is the cooperation of the valve and conduit, tube or pipe, in conjunction with the remainder of the system, that defines how fluids therein are conveyed, rather than the mere presence of an admittedly two-way valve. Upon further reflection on Margiott (especially column 2, lines 50 through 61, column 3, lines 11 through 21 and 32 through 36, and column 9, lines 30 through 32), it is clear that what the Examiner refers to as the claimed anode purge flowpath is in fact a hydrogen transfer means "to rapidly cycle the hydrogen fuel from the anode flow path, through the hydrogen transfer valve and into and throughout the cathode flow path." Thus, even in situations where hydrogen used in the anode flow path could be construed as a purging fluid, there is not so much as a hint in Margiott that such fluid is routed from the cathode flow path to the anode flow path. Further evidence of this one-way flow of fluid can be found at column 6, lines 25 through 48, where the patentee discusses an alternate way to flow hydrogen via diffusion across a PEM electrolyte from the anode flow field to the cathode flow field. Properly construed, it is clear that the device of Margiott relied upon by the Examiner cannot operate in the same way as the claimed device, and for that reason, does not fairly teach the features of claim 18. That the figure in Margiott shows the direction of fluid flow as unequivocally extending *from* the anode flowpath and *to* the cathode flowpath and the recirculation loop incorporated therein is additional evidence that Margiott does not teach what the Examiner says it does. As such, the Examiner's mere speculation as to the applicability of Margiott to the present claim 18 is unfounded, and therefore impermissible.

In any event, the Applicant has presently amended claim 18 to further distinguish this feature, thereby making such speculation irrelevant. Specifically, claim 18 now requires that the anode purge flowpath selectively receive a purging fluid from the recirculation loop. These amendments to claim 18, in conjunction with all of the contrary evidence in Margiott discussed above, indicate that there are significant structural and operational differences between them, and as such, means that amended claim 18 is patentably distinct from and entitled to a finding of allowability over the device taught in Margiott.

Rejections under 35 U.S.C. §103

Claims 25 through 29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Margiott in view of Reiser et al (US 2002/0076583, hereinafter Reiser). Because claim 18 has been amended, and for the reasons discussed above is now patentable over Margiott, it can no longer serve as a basis for rejection of claims 25 through 29. Furthermore, since MPEP 2143.03 states that one of the requirements of a valid *prima facie* case of obviousness is that all of the claim limitations must be taught or suggested, and nothing in the combined teaching of Margiott and Reiser satisfies this requirement, the rationale for maintaining the present rejection no longer exists.

The Applicant respectfully submits that in view of the above amendments and remarks the application is now in condition for allowance. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,

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